TABLE OF CONTENTS.

	PAGE
Opinion Below	1
Jurisdiction	1– 2
Questions Presented	2– 3
Constitutional Provisions	3– 4
Statement of the Case	4– 6
Constitutional Rights in the Trial Court	6– 7
Ruling of the Trial Court	7– 8
The Oral Motion	9
The Action of the Appellate Court on Constitutional Questions	9–10
The Petition for Rehearing	10
Argument	11–15
The Right to Demand Speedy Trial	11–15
Appendix A—Opinion of the Court by Judge Stewart —Affirming	17
Appendix B—Embezzlement—Jury and Verdict	25
Appendix C—Indictment for Misapplication of Money Belonging to State	27
Appendix D—Orders	30
Appendix E—Order Quashing These Indictments Against Defendant, Woodrow W. Runyon, Sr.	32

INDEX TO CITATIONS.

Cases:

	PAGE
Gideon v. Wainwright, 372 U. S. 335, 9 L. Ed. 2d 799, 83 S. Ct. 792	11
Pointer v. Texas, 380 U. S. 400, 13 L. Ed. 2d 923, 85 S. Ct. 1065	10, 11
Estes v. Texas, 14 L. Ed. 2d 543, 560	12

SUPREME COURT OF THE UNITED STATES

WOODROW W. RUNYON, SR., - - *Petitioner,*

v.

COMMONWEALTH OF KENTUCKY, - *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF KENTUCKY.

The petitioner, Woodrow W. Runyon, Sr., prays that a Writ of Certiorari issue to review the decision of the Court of Appeals of Kentucky in this case.

OPINION BELOW.

On February 26, 1965, the Court of Appeals of Kentucky announced the decision sought to be reviewed and its opinion is published in 393 S. W. 2d 877. It is appended (Appendix A, p. 17).

JURISDICTION.

On December 9, 1963, by judgment entered that day, the petitioner was adjudged in the Pike Circuit Court, the 35th Judicial District of the Commonwealth of Kentucky, to be guilty under an indictment charging that he obtained $452.25 by submitting a false and

fraudulent claim to the Pike County Board of Education.

The opinion of the appellate court sustaining his conviction was not given out for publication until October 1, 1965, when his Petition for Rehearing was overruled by the Kentucky Court of Appeals.

On December 29, 1965, the Court of Appeals of Kentucky, without opposition from the Attorney General of the State, and without opposition from the Commonwealth's Attorney of the 35th Judicial District, sustained petitioner's motion for stay of enforcement of the mandate to Saturday, February 26, 1966.

On December 30, 1965, Justice Potter Stewart granted an order extending to, and including, Saturday, February 26, 1966, the time to file this petition.

Petitioner claims jurisdiction to grant certiorari is conferred by 28 USC 1257 (3).

QUESTIONS PRESENTED.

1.

The question is whether the Commonwealth of Kentucky, over petitioner's plea of former jeopardy under the Constitution of the United States and after he had been tried and acquitted on a charge of embezzling $18,178.01 from his employer, the Pike County Board of Education, could then be tried on thirty-three indictments charging that he obtained different parts of the total sum by submitting false claims to the Board of Education.

2.

The further question is whether the petitioner, who demanded trial on all thirty-three indictments when they were first docketed in June of 1963, and was refused by the Commonwealth; who demanded trial on all thirty-three in November of 1963 and was refused, except as to one; who has been compelled to defend—albeit successfully—after change of venue to another county, a third series of thirty-two indictments charging him, and others, with "misapplication" of the same funds; who after more than three years in court still has thirty-two cases pending against him to be tried when the Commonwealth may choose, has been denied the prompt trial, equal protection of the laws and due process guaranteed by the United States Constitution to its citizens.

CONSTITUTIONAL PROVISIONS.

The United States Constitution, Amendment 5.

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

The United States Constitution, Amendment 6.

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of counsel for his defense."

The United States Constitution, Amendment 14, Section 1.

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE.

Woodrow W. Runyon, Sr., the petitioner here, a long time Bus Supervisor and on occasion Paymaster in transportation matters for the Board of Education of Pike County, Kentucky, was indicted on January 9, 1963, charged with the embezzlement of $18,178.01 (TR, page 21). He appeared at that time and the case

was passed to the next term. It was again assigned for trial on March 14, 1963. Petitioner appeared, but the case was passed over to the next term. It was again called for trial on June 17, 1963, and the petitioner appeared for the third time answering ready for trial (TR, page 27).

The Commonwealth appeared with a motion to dismiss or file away the indictment set for trial. In Kentucky a criminal case "filed away" is subject to redocketing at the will of the prosecution.

Your petitioner, the defendant there, insisted on trial.

The Commonwealth refused to try any case, but indicated that one of thirty-three new indictments might be tried after a certain period of time.

The defendant insisted that Indictment No. 33, the embezzlement charge which was set for trial, be tried or else the whole number of new indictments charging the taking of the same total sum be tried together. Over the objection of the Commonwealth, the Court sustained the defendant's contention and compelled the Commonwealth to try the embezzlement charge. This unusual transaction is set forth at length in the record before this Court (TR, pages 22-46).

The Commonwealth refused to enter any evidence and the jury returned a verdict of not guilty. (Appendix B, p. 25).

On November 14, 1963, the new series of thirty-three indictments came on for trial. The Commonwealth indicated a willingness to try one, Indictment No. 129, and to continue the rest.

The defendant objected and demanded trial on all thirty-three indictments.

He was overruled. Trial on the one resulted in a conviction under Indictment No. 129, for obtaining $452.25, from the Pike County Board of Education by means of a false claim.

That is the only trial he has been able to get.

On June 3, 1964, another series of thirty-two indictments was returned by the Pike County Grand Jury against petitioner, jointly with the County School Superintendent and the Assistant Superintendent, charging misapplication of state funds. These were numbered consecutively from 503 to 534. Indictment 503 is appended as a specimen (Appendix C, p. 27).

On the motion of the other defendants—not petitioner—this series was transferred to Floyd County Kentucky (Appendix D, p. 30). Followed a year of motions and hearings. On May 27, 1965, all thirty-two were dismissed (Appendix E, p. 32).

After more than three years in court, sixty-six indictments, motions, hearings and assignments galore, petitioner is still subject to trial thirty-two times.

CONSTITUTIONAL RIGHTS IN THE TRIAL COURT.

On November 14, 1963, petitioner filed his written motion to dismiss Indictment No. 129, and ground Number 4 is quoted as follows:

> "The prosecution of the charge stated in this indictment would deprive defendant of rights

guaranteed to him by the Constitution of the United States of America, Amendment 5, Amendment 6 and Amendment 7" (TR, page 13).

On November 18, 1963, the day before trial, the petitioner filed his second written motion to dismiss, captioned in each one of the thirty-three indictments, which bore numbers consecutively from 104 to 136, and the second paragraph stated the following ground:

"The prosecution of this defendant in 33 separate, several and distinct indictments, after defendant had been indicted, tried and acquitted in one cause, which embraced all the criminal acts charged in each and in all of the above captioned indictments, constitutes a wrongful, multiplication and splitting of the charge against defendant and denies to defendant, a citizen of the United States of America and of the Commonwealth of Kentucky, the prompt trial guaranteed to defendant by the Constitution of the United States of America, Amendment 5 and Amendment 6, and the Constitution of the Commonwealth of Kentucky, Section 11" (TR, pages 53-54).

Ruling of the Trial Court.

The action on one of petitioner's constitutional questions is shown in the trial order for November 19, 1963, where it is stated:

"The defendant present with counsel, insisted upon his motion to dismiss the indictment upon a plea of former jeopardy, and the Court being suf-

ficiently advised, overruled said motion to dismiss, to which ruling of the Court, the defendant excepts" (TR, page 55).

After filing written motion asserting the division into thirty-three charges would be used to deny prompt trial, it would appear to be necessary for the defendant, the petitioner here, to make his demand for prompt trial.

This he did.

The Reporter's Transcript of Evidence and Proceedings in the Pike Circuit Court shows that:

> "The defendant moves that the 33 cases against him Numbered 104 to 136 consecutively and serially, be tried together at one time before the same jury" (TR, page 75).

The Court action is contained in the one word, "overruled" (TR, page 76).

The defendant took an exception in part for this reason:

> "(2) this division denies this defendant the speedy trial guaranteed him by the Constitution of the United States of America and the Constitution of the Commonwealth of Kentucky; (3) the refusal to try all cases at once constitutes an aggravation of the charge of double jeopardy heretofore made by motion, in that it multiplies the jeopardy many times over" (TR, page 76).

After further discussion the Court repeated its statement:

> "The motion is overruled" (TR, page 76).

The Oral Motion.

When the Commonwealth rested, the defendant made an oral motion for judgment of acquittal saying in part:

> "(2) the defendant moves on the ground that he has been previously tried and acquitted of the acts charged in the indictment on trial; (3) he moves on the ground that the splitting of the offense charged against this defendant into thirty-three separate indictments denies to him the speedy trial guaranteed him by the constitution of the United States of America and the constitution of the Commonwealth of Kentucky" (TR, page 148).

The action of the Court on this motion is given:

> "Thereupon, the Court having considered said motion, overruled the same" (TR, page 149).

Action of the Appellate Court on Constitutional Questions.

The Court of Appeals of Kentucky accepted the challenge to consider the constitutional rights of this petitioner. The opinion sought to be reviewed states in part:

> "Appellant's last complaint is that he was denied a speedy trial, and thus there was a violation of the right in this respect guaranteed him by the Sixth Amendment to the Constitution of the United States and Section 11 of the Constitution of Kentucky" (Appendix A, p. 22).

Then, the Appellate Court met the challenge by ruling decisively:

> "The speedy trial provision of the Sixth Amendment to the Constitution of the United States does not apply in state prosecutions" (Appendix A, p. 18).

On the other constitutional question, the Appellate Court took up the gage with this statement:

> "Appellant's final contention is that he has been put in double jeopardy by his conviction of the offense in this case. He, in effect, argues that his acquittal under the embezzlement indictment is a bar to this action" (Appendix A, p. 18).

The ruling of the Court is actually contained in the one sentence. Its discussion, and quotations from authorities, appear to run contrary to that sentence, but the ruling is plain:

> "It is readily apparent different elements make up each crime" (Appendix A, p. 23).

The Petition for Rehearing.

The Petition for Rehearing urged petitioner's constitutional defenses and called attention to the interpretation of the Sixth Amendment in Pointer v. Texas, 380 U. S. 400, 13 L. Ed 2d 923, 85 S. Ct. 1065.

The Petition for Rehearing was overruled without an opinion and mandate issued on October 1, 1965 (TR, page 249).

ARGUMENT.

The Right to Demand Speedy Trial.

Only a part of the petitioner's efforts to obtain trial are recited in the Statement of the Case. So much as became public record is offered in the Transcript. Even so it is clear that years of effort have brought him only to the point, where cases pending against him with possible penalties amounting to three centuries of time are ready to be invoked if and when it is the will of the prosecution.

This is a mass deployment of governmental power. It is a saturation attack, which can override the defenses of any ordinary citizen without regard to merit.

By the ruling of the Court of Appeals of Kentucky the state guaranty of prompt trial avails nothing.

By the ruling of the Court of Appeals of Kentucky the Sixth Amendment to the United States Constitution gives no guarantee of trial in the criminal courts of that state.

The petitioner and all who may be charged with crime in the Commonwealth of Kentucky are without hope save in this Court.

It is almost three years since Gideon v. Wainwright, 372 U. S. 335, 9 L. Ed. 2d 799, 83 S. Ct. 792, declared the standards of the Sixth Amendment concerning the right to counsel were binding on the State Courts.

It is less than one year since Pointer v. Texas, *supra,* and Douglas v. Alabama, 380 U. S. 415, 13 L. Ed. 2d 934, 85 S. Ct. 1074, clearly applied the confrontation requirements of Amendment Six.

In the months intervening the advance continues. Griffin v. California, 14 L. Ed. 2d 106, ruled the self-incrimination clause of the Fifth Amendment barred the state from allowing comment on failure of an accused to testify.

Estes v. Texas, 14 L. Ed. 2d 543, 560, ruled that broadcasting by television a trial of great public notoriety denied the defendant due process. Here, in the first of the separate opinions, the current recognition of the Sixth Amendment as a standard for constitutional rights in state trials is set forth and the breadth and importance of the doctrine is suggested in these words:

> "But it also has been agreed that neither the Sixth nor the Fourteenth Amendment is to be read formalistically, for the clear intent of the amendments is that these specific rights be enjoyed as a constitutional trial."

Now we do not offer a prior decision that the speedy trial of the Sixth Amendment is bound upon the states by the Fourteenth Amendment. In the light, however, cast upon the Sixth Amendment by late decisions how can such a conspicuous need as the right to demand trial be overlooked?

Petitioner's Plea of Former Jeopardy.

The Kentucky Court of Last Resort considered petitioner's reliance on the doctrine of former jeopardy and denied relief.

The opinion below stated that petitioner had been tried on the embezzlement charge. It quoted the former Commonwealth's Attorney to the effect that the thirty-two indictments covered the same sum of money alleged in the original indictment to have been embezzled.

The present state of the law on former jeopardy in Kentucky is declared by the opinion below in two sentences:

> "Both falsifying a claim against a political subdivision and embezzlement are stautory offenses. It is readily apparent different elements make up each crime."

In the light of the Court's statement in the same opinion that the money involved in the embezzlement indictment and the money involved in the series of indictments for false claims was the same money the actual holding is, that, notwithstanding the identity of the essential criminal act charged, the addition of a different element, and a different name, permits another trial and another penalty.

That this is a change in the law and a wide departure from the traditions of the former jeopardy rule in Kentucky, can be seen by comparing it with the review of decisions, on this point petitioner's application for rehearing below, which is attached to page 246 of the Transcript herein.

It is further of interest that application of this latest rule to former decisions upholding pleas of former jeopardy in Kentucky would require that these old decisions be now reversed and the plea in every one of them be denied.

The effect that the new prevailing rule could have on past adjudications is small. Most of the citizens whose pleas would be affected have travelled beyond the jurisdiction of the Courts of the Commonwealth.

It is the prospective view which is truly alarming. Taking for instance homicide, an offense not heretofore unknown in Kentucky, the ambiguous prosecutor can now warm up with a conviction under the statute which condemns assault with a deadly weapon. Death of the victim is not an element. He prosecutes again on a charge of involuntary manslaughter. Death is an element here, but malice aforethought is not.

Having passed this state with either an acquittal or a conviction—the prosecutor need pay no attention to this feature—he next indicts for willful murder. This offense has the element of death but it contains the different element of malice aforethought.

If it be urged that this is an extreme view and contrary to prior rulings of the Kentucky courts, we could only respond that the ruling sought to be reviewed is extreme enough to abrogate the protection of the double jeopardy doctrine in Kentucky and is likewise contrary to long established law there.

We beg to present that the decision sought to be reviewed destroys, in every practicable sense, the Constitutional right to be tried only once for a criminal act

and to demand a speedy trial under the Constitution of the Commonwealth of Kentucky. It abrogates those rights as to citizens of the United States within Kentucky so far as that court can do so.

Respectfully submitted,

JEAN L. AUXIER,
Pikeville, Kentucky,
Attorney for Petitioner.

CERTIFICATE OF SERVICE.

It is hereby certified that the foregoing Petition has been served upon the opposing counsel by mailing a copy thereof to the Honorable Thomas B. Ratliff, Commonwealth's Attorney, 35th Judicial District of Kentucky, Pikeville, Kentucky; to the Honorable Robert F. Matthews, Attorney General, Frankfort, Kentucky and to the Honorable James B. Stephenson, trial judge, Pikeville, Kentucky.

Attorney for Petitioner.

APPENDIX A

COURT OF APPEALS OF KENTUCKY

FEBRUARY 26, 1965

WOODROW W. RUNYON, SR., - - - - *Appellant,*

v.

COMMONWEALTH OF KENTUCKY, - - - *Appellee.*

Appeal from Pike Circuit Court,
Honorable James B. Stephenson, Judge.

OPINION OF THE COURT BY JUDGE STEWART—AFFIRMING.

Appellant, Woodrow W. Runyon, Sr., was convicted in the Pike Circuit Court under an indictment charging him with submitting a false claim to the Pike County Board of Education. See KRS 434.240. He was given one year in the penitentiary. It is from this conviction and his subsequent sentence that he appeals. The grounds urged for reversal of the judgment are:

1. No public offense was charged: (a) KRS 434.240 does not apply because a school district is not a political subdivision of the state; and (b) the indictment does not charge the offense defined by the statute.

2. There was a variance between the allegations of the indictment and the proof.

3. The procedure followed by the Commonwealth denied him his state and federal rights to a speedy trial.

4. He has been subjected to double jeopardy by the herein conviction.

We shall answer each of these questions in the order presented.

Up until the approximate time the indictments hereinafter mentioned were returned by the grand jury, appellant was the supervisor of school buses for the Pike County Board of Education. One of his duties as such was to purchase parts for the repair of the buses owned and operated by the Board and to submit claims therefor for approval of the payment by the Board.

At a date not set forth in the record, he began the practice of submitting false claims from a nonexistent auto-parts firm by the name of "Curtis Auto Parts" at Williamson, West Virginia. He would present the false invoice to the Board and it would approve it. He would then write the word "hold" on this invoice, thus instructing the finance officer of the Board (who mailed out the Board's checks) to hold the check for appellant to personally pick up. He would then obtain the check and deposit it in the First National Bank of Williamson, West Virginia, under the fictitious name of "T. C. Curtis, Curtis Auto Parts." One spurious invoice dated June 4, 1963, was for $452.25 and it is this transaction that is the basis for the indictment and conviction involved in this appeal. This particular invoice and a check for the amount mentioned were not held to be picked up later by appellant but were mistakenly mailed to "Curtis Auto Parts" of Williamson, West Virginia, by the finance officer. The envelope and its contents came back stamped, "Addressee Unknown," and subsequent investigation carried out by the Board unfolded appellant's numerous alleged fraudulent acts.

On January 9, 1963, appellant was indicted by the grand jury for embezzling $18,178.01, this being the total amount he is accused of abstracting from the Board. He entered a plea of not guilty on January 14th. After a general continuance the case was set for trial on June 17, 1963. At some time before June 15th, the grand jury returned thirty-two indictments against him for submitting false claims "to the Pike County Board of Education, a political subdivision of the Commonwealth of Kentucky."

On June 15th the Commonwealth's attorney filed a motion to dismiss the embezzlement indictment for the reason that the thirty-two indictments covered the same sums of money alleged in the original indictment to have been embezzled, whereas the offenses of submitting false claims, not the offense of embezzlement, were the alleged crimes for which he should be tried. One June 17th the circuit judge overruled this motion and, over the strenuous objections of the Commonwealth's attorney, proceeded to trial on the embezzlement charge. The Commonwealth's attorney refused to prosecute under this charge and introduced no evidence. Also, no evidence was introduced on behalf of appellant. The jury, after being instructed, retired and came back with a not-guilty verdict.

In November of 1963 Runyon was tried on one of the thirty-two indictments for submitting a false claim, namely, the one mentioned above involving $452.25, and was convicted.

Appellant's contention that KRS 434.240 does not apply because, as claimed, the Pike County school district is not a political subdivision of the Commonwealth of Kentucky, is refuted by both the statutory and the case law of this state. We need only set forth brief statements from some of the authorities in order to settle this issue definitely. KRS 61.420(5), in defining a political subdivision, states that it includes "counties, municipal corporations, and

school districts." The case of Board of Education of City of Corbin v. City of Corbin, 301 Ky. 686, 192 S. W. 2d 951, 952, states as follows: "Although some of the independent districts are coterminous with cities of the Commonwealth, each is a municipality or **political subdivision** separate and distinct from such a city." (Emphasis added.) Board of Education of Louisville v. Society of Alumni of L.M.H.S., Inc., Ky., 239 S. W. 2d 931, makes this relevant statement: "In this State public education has long been recognized as a function of State government, and members of boards of education have been held to be state officers." See also City of Louisville et al. v. Board of Education of Louisville, 302 Ky. 647, 195 S. W. 2d 291, and City of Louisville v. Commonwealth, 134 Ky. 488, 121 S. W. 411.

Thus, the only conclusion possible is that the Pike County school district is a political subdivision of this state, the members of which are state officers, and it follows that the indictment drawn under KRS 434.240 did charge a public offense.

As a subdivision of his first point appellant also maintains the indictment is defective because it fails to allege a specific intent to commit the crime. KRS 434.240 denounces three things in connection with any claim made aganst the state or any political subdivision thereof: (a) Making a false and fraudulent statement of an account; (b) fraudulently omitting to make a true statement of an account; and (c) altering a statement after it has been accurately made. This statute then says, in part, there must be a fraudulent intent: First, "to conceal the true conditions of the account"; or secondly, "to acquit any person of such an account"; or thirdly, "to obtain, or enable any other person to obtain, money, or other moveable thing of value, from the state or any political subdivision of the state, when the person was not entitled to the money or any other moveable thing of value."

In this case the gravamen of the crime purportedly committed was the falsification of a claim against a political subdivision. The indictment in substance averred that appellant submitted "a false claim in the sum of $452.25 and, as a result, caused the Pike County Board of Education to pay that amount."

The caption of the indictment, pursuant to RCr 6.10(3), "shall state" the particular statute under which the indictment was drawn, but an error in or omission of the citation relied upon is not a ground for dismissal of the indictment or reversal of a conviction, unless such error or omission misleads a defendant prejudicially. Subsection 1 of this Rule states that "the caption shall be a part of the indictment." Under subsection 2 of the same Rule an indictment is sufficient if it contains a "plain, concise and definite statement of the essential facts" that constitute the particular offense "with which the defendant is charged."

As the purpose of an indictment is to apprise the accused, with reasonable certainty, of the offense charged, it seems clear that such was done here. Under the provisions of RCr 6.10, which we have noted in detail above, it becomes unnecessary to restate all the technical requisites of the crime of which a defendant is accused, if the language of the indictment, coupled with the applicable statute, unmistakably accomplishes this end result.

Appellant next asserts there is a variance between the allegations of the indictment and the evidence introduced. He maintains that, whereas the indictment avers the claim he submitted caused the Board to "pay the sum of $452.25 to said Curtis Auto Parts," the Commonwealth's own proof reveals the Board made no actual outlay of money on this claim. A reading of KRS 434.240, the statute under which appellant was indicted, will disclose that the actual receiving of the money by the perpetrator of the act is not an element of the offense of submitting a false claim. The

alleged criminal act, in the case at bar, was the submission of a false account to the Board. It was unnecessary to cash in on the fraud, which was attempted but foiled, in order to make the crime complete. The case of Braswell v. Commonwealth, Ky., 339 S. W. 2d 637, states: "Generally, a variance between the indictment and the proof is not regarded as material unless it misleads the accused in making his defense or exposes him to the danger of a second conviction of the same offense." Appellant does not contend in the present case that he was misled by the indictment to the extent that he was unable to resort to the proper measures to protect himself. We conclude this point is groundless.

Appellant's next complaint is that he was denied a speedy trial, and thus there was a violation of the right in this respect guaranteed him by the Sixth Amendment to the Constitution of the United States and Section 11 of the Constitution of Kentucky. The record discloses the indictment was returned in June of 1963 and appellant's trial was in November of 1963. This Court has held that a man indicted in May, 1954, and tried in November, 1955, was not deprived of the benefit of a speedy trial. See Clark v. Commonwealth, Ky., 293 S. W. 2d 465. The speedy trial provision of the Sixth Amendment to the Constitution of the United States does not apply in state prosecutions. See Barker v. Commonwealth, Ky., 385 S. W. 2d 671, citing Odell v. Burke, 281 F. 2d 782 (7 CA). However, the due process clause of the Fourteenth Amendment to the Constitution of the United States is applicable. Jones v. Commonwealth, 114 Ky. 599, 71 S. W. 643, relied upon by appellant is distinguishable from the present case.

Appellant's final contention is that he has been put in double jeopardy by his conviction of the offense in this case. He, in effect, argues that his acquittal under the

embezzlement indictment is a bar to this action. In Moss v. Jones, Ky., 352 S. W. 2d 557, 558, this Court defined double jeopardy in this concise manner: "In plain language, the doctrine is that a person may not be tried or prosecuted the second time for the same offense." Braswell v. Commonwealth, Ky., 339 S. W. 2d 637, 638, said: "The 'same offense' within the constitutional meaning does not signify the same offense by name or designation but has been defined as the same criminal act or omission." In Easley v. Commonwealth, Ky., 320 S. W. 2d 778, 779, this statement appears: "The test to determine whether the acts committed at the same time and place constitute one or more offense is, if proof of what is set out in the second indictment made on the trial of the first indictment would sustain it, then the two indictments are for the same offense. If what is set out in the second indictment when proved upon the trial of the first will not sustain it, then they are distinct offenses, and the conviction or acquittal of either is not a bar to the other."

We have heretofore detailed the main ingredients which constitute the offense of falsifying a claim against a political subdivision. Embezzlement, simply stated, is a fraudulent conversion of personal property after its possession has been lawfully acquired. See Roberson's New Kentucky Criminal Law and Procedure (2nd Ed.) sec. 897, p. 1117. See also subsections 1 and 2 of KRS 434.220. Both falsifying a claim against a political subdivision and embezzlement are statutory offenses. It is readily apparent different elements make up each crime.

Applying the principles of law to the facts in this case, we are of the opinion that embezzlement and submitting a false claim to a political subdivision are separate offenses. If the elements of the latter were established at the embezzlement trial, they would not sustain the embezzlement

charge, hence an acquittal under an indictment for either would not be a bar to an indictment for the other.

Wherefore, the judgment is affirmed.

Attorney for Appellant:

JEAN L. AUXIER,
Pikeville, Kentucky.

Attorneys for Appellee:

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Frankfort, Kentucky,

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APPENDIX B

ORDERS PIKE CIRCUIT COURT

17th day of June 1963

Commonwealth Order Book #49, Page 44

COMMONWEALTH OF KENTUCKY

v.

WOODROW W. RUNYON

No. 33

EMBEZZLEMENT—JURY AND VERDICT.

This case being called for trial, the Commonwealth requested a hearing on the motion to dismiss the indictment which motion was filed on June 15, and the Court and parties withdrew to chambers and said hearing.

Thereupon the Court overruled said motion to dismiss the indictment, and directed the trial to proceed. The Commonwealth's Attorney refused to prosecute the case, and the Court proceeded to the selection of the Jury. Thereupon the clerk drew from lot the following jury, to-wit: Rethia Porter, Ira Mullins, Earl Blackburn, J. L. Williamson, Allison Blankenship, Rufus Tackett, Pearl Lemon, Buff Wolford, Mrs. Laura Keathley, Lonnie Bevins, Mrs. Gladys Conley and Mordicia Blackburn, who were duly qualified, accepted by the defendant, and who were duly sworn as the law directs. The Jury having heard the indictment read by the Clerk, the defendant's plea and the written instructions by the Court, retired for deliberation and afterwards returned into open court with the following verdict, to-wit:

"We the Jury agree and find the defendant, Woodrow W. Runyon, not guilty. Mordicia Blackburn, one of the Jurors."

Thereupon the defendant was allowed to go hence without day.

STATE OF KENTUCKY
COUNTY OF PIKE } SCT:

I, CLAUDE REED, Clerk of the Circuit Court in and for the county and state aforesaid, do hereby certify that the foregoing typewritten matter is a true and correct copy of the Order showing the Jury and Verdict, in the case of The Commonwealth of Kentucky vs. Woodrow W. Runyon, being indictment No. 33, as appears of record in my said office and on file therein.

Witness my Hand and Seal of Office this the 8th day of February, 1966.

(s) CLAUDE REED,
Clerk, Pike Circuit Court,

By (s) BETTY PRATER JUSTICE,
Deputy Clerk.

(Seal)

APPENDIX C

PIKE CIRCUIT COURT

No. 503

COMMONWEALTH OF KENTUCKY

v.

C. H. FARLEY
HERBERT COOL
WOODROW W. RUNYON, SR.

INDICTMENT FOR MISAPPLICATION OF MONEY BELONGING TO STATE.

A TRUE BILL

(s) M. A. Blackburn
Foreman of Grand Jury

Presented by the foreman in the presence of the Grand Jury, to the Court and filed in open court, this 3 day of June, 1964.

(s) CLAUDE REED,
Clerk, Pike Circuit Court.

Witnesses:
Wilena Justice, Pikeville
John Henry Smith, Pikeville
Rell West, Canada, Ky.
Phyllis Faulkner, Pikeville
Rush Sword, Pikeville

Bruce Jones, Williamson, W. Va.
John P. Compton, Pikeville
Fred W. Lugart, Jr., Louisville, Ky.
Kyle Vance, Louisville
George W. Coleman, Pikeville
Tillie Reed, Pikeville
Ray Burke, Pikeville
Alvery Potter, Pikeville

PIKE CIRCUIT COURT

COMMONWEALTH OF KENTUCKY *v.* C. H. FARLEY HERBERT COOL WOODROW W. RUNYON, SR. Defendant(s)	KRS 434.020

The grand jury charges:

On or about the 2 day of June, 1964, and before the finding of this indictment in Pike County, Kentucky, the above named defendant(s) committed the offense of willfully misapplying, using, and fraudulently disposing of money in their custody and while under a duty to specifically apply same, belonging to the Pike County Board of Education, with the intent to deprive said Board of the money for defendants' benefit or for the benefit of others, by aiding, abetting, and permitting defendant, Woodrow W. Runyon, Sr., an employee of said Board under the supervision of defendant C. H. Farley, to use money belonging to said Board for a purpose not authorized by law and to submit a false claim to said Board in the form of Invoice No. 5669

of the Curtis Auto Parts in the sum of $469.00, which invoice and claim was known by defendants, C. H. Farley, Herbert Cool, and Woodrow W. Runyon, Sr., to be fraudulent and as a result of same caused the Board to pay said sum of $469.00 to Curtis Auto Parts by Check No. 3819, dated 9-10-57 and drawn on the Pike County Board of Education, against the peace and dignity of the Commonwealth of Kentucky.

A True Bill

(s) M. A. BLACKBURN
Foreman

APPENDIX D

COMMONWEALTH ORDERS PIKE CIRCUIT COURT

Commonwealth Order Book # 50, Page 64
17 day of February, 1965

COMMONWEALTH OF KENTUCKY *v.* C. H. FARLEY HERBERT COOL WOODROW W. RUNYON, SR.	Indictments Nos. 503, 504, 505, 508, 509, 510, 512, 517, 519, 522, 523, 524, 525, 526, 527, 528, 533, 506, 507, 511, 513, 514, 515, 516, 518, 520, 521, 529, 530, 531, 532, 534
AND	
COMMONWEALTH OF KENTUCKY *v.* C. H. FARLEY HERBERT COOL	Indictment No. 502
AND	
COMMONWEALTH OF KENTUCKY *v.* C. H. FARLEY	Indictments Nos. 483, 485, 486, 488, 489, 493, 498, 499, 500, 484, 487, 490, 491, 492, 494, 495, 496, 497, and 501
AND	
COMMONWEALTH OF KENTUCKY *v.* HERBERT COOL	Indictment No. 629
AND	
COMMONWEALTH OF KENTUCKY *v.* ALVERY POTTER	Indictments Nos. 627 and 628

ORDER.

Pursuant to the opinion of the Court heretofore filed and made a part of the record, it is ordered by the Court that the petitions for change of venue filed by the defendants, C. H. Farley, Herbert Cool and Alvery Potter, in each and all of the above captioned cases be and they are hereby sustained and that these prosecutions be and they are hereby transferred to the Circuit Court of an adjacent County, which Court shall have and take jurisdiction with full power to decide all pending motions and to proceed to try and finally dispose of these prosecutions, to which the plaintiff objects.

For the reasons set forth in the opinion, it appears to the Court that the interest of justice would be best served by the transfer of these cases to the Floyd Circuit Court. However, if either the Commonwealth or defendants have any objections to a transfer to that Court such objections shall be immediately submitted in writing supported by such evidence as the objecting party deems necessary. In the event no written objection is filed within seven days from the date of the entry of this order, the attorneys are hereby directed to prepare an order transferring these proceedings to the Floyd Circuit Court.

This February 17th, 1965.

SCOTT REED, *Special Judge.*

STATE OF KENTUCKY }
COUNTY OF PIKE } SCT:

I, CLAUDE REED, Clerk of the Circuit Court in and for the county and state aforesaid, do hereby certify that the foregoing typewritten matter is a true and correct copy of the Order transferring cases to the Floyd Circuit Court, as entered in the cases of The Commonwealth of Kentucky v. C. H. Farley, Herbert Cool, Woodrow W. Runyon, Sr.,

and Alvery Potter, as appears of record in my said office and on file therein.

Witness my Hand and Seal of office this the 7th day of February, 1966.

(s) CLAUDE REED,
Clerk, Pike Circuit Court,
By: (s) BETTY JUSTICE,
D. C.

(Seal)

APPENDIX E

FLOYD CIRCUIT COURT

Orders Commonwealth Causes
Extended April-May Term, 46th day
27th day of May, 1965

#503-534 Inc.

COMMONWEALTH OF KENTUCKY, - - - *Plaintiff,*

Against

C. H. FARLEY,
HERBERT COOL,
WOODROW W. RUNYON, SR., - - - *Defendants.*

ORDER QUASHING THESE INDICTMENTS AGAINST DEFENDANT, WOODROW W. RUNYON, SR.

The above styled cases are before the Court on the Separate motion of the defendant, Woodrow W. Runyon, Sr., to dismiss the indictments as to him.

Prior to the transfer of these cases to this Court from Pike County on change of venue, thirty-two indictments,

styled Commonwealth of Kentucky versus Woodrow W. Runyon, Sr., Nos. 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 130, 131, 132, 133, 134, 135 and 136, in each of which the defendant, Woodrow W. Runyon, Sr., is charged with the offense of filing a false claim, has been transferred to this Court on a change of venue from Pike County and are now pending in this Court.

An examination of Indictments Nos. 104 to 136, inclusive, excluding therefrom No. 129, against Woodrow W. Runyon, Sr., and Indictments Nos. 503 and 534, inclusive, charging defendants, Runyon, Farley and Cool, with misapplication of funds, are all based on the claims alleged to have been filed by the defendant Runyon, with the Pike County Board of Education.

Indictments Nos. 104 to 136 inclusive, excluding No. 129, against Woodrow W. Runyon, Sr., individually, were returned by the Grand Jury of Pike County at the June 1963 Session of the Pike Circuit Court under the provisions of KRS 434.240, whereas these indictments, Nos. 503 to 534, inclusive, now before the Court on motion of the defendant, Woodrow W. Runyon, Sr., to dismiss as to him, were returned under the provisions of KRS 434.020 by the June 1964 Grand Jury of Pike County.

The Court having considered the record and the facts aforesaid and being advised, is of the opinion that the Commonwealth is not entitled to maintain the above captioned indictments as to the defendant, Woodrow W. Runyon, Sr., and the Court will treat his motion to dismiss these indictments as a motion to quash each and all of them.

It is ordered and adjudged by the Court that the above captioned indictments against C. H. Farley, Herbert Cool and Woodrow W. Runyon, Sr., be and each and all of them

are hereby quashed as to the defendant, Woodrow W. Runyon, Sr.

(s) HOLLIE CONLEY, *Judge.*

STATE OF KENTUCKY
COUNTY OF FLOYD } SCT

I, FRANK DEROSSETT, Clerk of the Circuit Court for the County and State aforesaid, hereby certify that the foregoing is a true and correct copy of the Order entered May 27, 1965, in the cases of Commonwealth of Kentucky v. Woodrow W. Runyon, Sr., et al #503-534 Incl. as appears of record in Commonwealth Order Book No. 37, page 125, in my office.

Given under my hand this February 9, 1966.

FRANK DEROSSETT, *Clerk,*
By (s) CHRISTINE SPRADLIN, *D. C.*

(Seal)